

DOCKETED

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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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CLERK, U.S. DISTRICT COURT

BALLY MANUFACTURING CORPORATION, §
§
Plaintiff, §
§
v. §
§
D. GOTTLIEB & CO., WILLIAMS §
ELECTRONICS, INC., and §
ROCKWELL INTERNATIONAL §
CORPORATION, §
§
Defendants. §
and

CIVIL ACTION NO.
78 C 2246 ✓

BALLY MANUFACTURING CORPORATION, §
§
Plaintiff, §
§
v. §
§
GAME PLAN, INCORPORATION, §
§
Defendant §

CIVIL ACTION NO.
79 C 713

RESPONSE OF ROCKWELL INTERNATIONAL
CORPORATION TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES (1-17)

General Response and Objections:

Initially Defendant Rockwell International Corporation ("Rockwell") objects to Plaintiff's First Set of Interrogatories as not in compliance with Local Rule 9(g). Rockwell submits that there exist approximately twenty subparts in Interrogatory No. 1 alone.

Accordingly, Rockwell does not believe it is under any obligation to answer these interrogatories since they are clearly violative of the Local Rule.

Nonetheless, Rockwell will provide the following responses in the interest of expediting discovery and avoiding conflict about discovery.

INTERROGATORIES

1. Does Rockwell contend that Patent No. 4,093,232 (hereinafter the '232 patent) is not novel under 35 U.S.C. § 102? If so:

1(A). Does Rockwell contend that the '232 patent is not novel under Section 102(a) because the alleged invention of the '232 patent was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicants for the '232 patent? If so:

(i) Describe all acts, facts, occurrences, and, items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the invention of the '232 patent was known or used by others in this country before the alleged invention

thereof by the applicants for the '232 patent and identify all persons having knowledge relating thereto; and

- (ii) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the invention of the '232 patent was patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicants for the '232 patent and identify all persons having knowledge relating thereto; and
- (iii) State with specificity and clarity the basis for any contention that the subject matter of the '232 patent was not patentable under 35 U.S.C. 102(a).

RESPONSE TO 1 AND 1(A):

Rockwell does contend that the '232 patent is not novel under 35 U.S.C. § 102. Specifically, Rockwell contends that the '232 patent is not novel under § 102(a) because its subject matter was known and used by others in this country, specifically workers at Atari Corporation and Ramtek, Inc.

The facts surrounding those acts are set forth in the relevant depositions of the individuals involved.

Furthermore, discovery is not closed and defendant has not formulated its position with respect to the acts, facts, and occurrences which will be relied upon at trial to establish an absense of novelty of the '232 patent under § 102(a). Indeed, defendant is presently investigating other acts, facts and occurrences which may be relied upon at trial.

1(B). Does Rockwell contend that the applicants for the '232 patent lost their right to a patent under 35 U.S.C. 102(b) because the invention of the '232 patent was patented or described in a printed publication in this or a foreign country, or in public use in this country, more than one year prior to the date of the application for the '232 patent in the United States? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the invention of the '232 patent was patented or described in a printed publication in this or a foreign country more than one

year prior to the date of the application for the '232 patent in the United States and identify all persons having knowledge thereof;

- (ii) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the invention of the '232 patent was in public use in this country, more than one year prior to the date of the application for the '232 patent in the United States and identify all persons having knowledge thereof; and
- (iii) State fully and with clarity the basis for any contention that the subject matter of the '232 patent is not patentable pursuant to 35 U.S.C. 102(b), including a specific showing of not only the identity of the patents or printed publications which are alleged to have disclosed the invention of the '232 patent more than one year prior to its filing date, but also the manner in

which such patents or printed publications disclose such invention, and further including a detailed and specific statement of the circumstances under which the invention of the '232 patent is contended to have been in public use in this country more than one year prior to the filing date of the application in the United States.

RESPONSE TO 1(B):

Rockwell does contend that the applicants for the '232 patent lost their right to the patent under 35 U.S.C. 102(b). Various references cited in Rockwell's protest (the protest filed in the Patent and Trademark Office by Rockwell pursuant to the reissue of the '232 patent) which disclose the use of a microprocessor controller for a pinball game represent effective anticipations of the '232 patent. Those disclosures to one skilled in the art used in accordance with instructions then provided for microprocessors, represent a complete disclosure of the claimed subject matter of the '232 patent.

The fact that microprocessor manufacturers held out pinball applications as viable applications of microprocessors additionally renders the instruction manuals published for such microprocessors (such as by Intel and other

microprocessor manufactures) effective anticipations of the claimed subject matter of the '232 patent.

Rockwell's investigation of the printed and published prior art is continuing, and any further items of information on which Rockwell will rely will be cited to Plaintiff.

1(C). Does Rockwell contend that the '232 patent is not novel under 35 U.S.C. 102(e) because the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicants for the '232 patent? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including specifically the patents and applications to which defendant refers in the above-recited contention, with appropriate page and line numbers, which in any way support or relate to the above-recited contention; and
- (ii) State fully and with clarity the basis for any contention that the subject matter of the '232 patent is not patentable under 35 U.S.C. 102(e).

RESPONSE TO 1(C):

All prior art applicable to the claimed subject matter of the '232 patent under 35 U.S.C. 102(e) and presently known to Rockwell is cited in the Rockwell protest.

1(D). Does Rockwell contend that the '232 patent is not novel under 35 U.S.C. 102(f) because the applicants for the '232 patent did not themselves invent the subject matter sought to be patented in the '232 patent? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the applicants for the '232 patent did not themselves invent the subject matter sought to be patented in the '232 patent and identify all persons having knowledge thereof; and
- (ii) State with clarity and specificity the basis for any contention that the subject matter of the '232 patent is not patentable pursuant to 35 U.S.C. 102(f).

RESPONSE TO 1(D):

Response to this interrogatory is premature inasmuch as Rockwell is still investigating the inventorship of the '232

patent and the genesis of the alleged concept claimed in said patent.

1(E). Does Rockwell contend that the '232 patent is not novel under 35 U.S.C. 102(g) because before the invention by the applicants for the '232 patent, the invention was made in the United States by another who had not abandoned, suppressed or concealed it? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the above-recited contention; and
- (ii) State with specificity and clarity the basis for any contention that the subject matter of the '232 patent is not patentable pursuant to 35 U.S.C. 102(g).

RESPONSE TO 1(E):

Rockwell does contend that '232 patent is not novel under 35 U.S.C. 102(g) because of a prior reduction to practice of microprocessor controlled pinball games meeting all elements of the claims of the '232 patent by personnel at Atari Corporation. Rockwell further may rely upon a

reduction to practice at Ramtek as a prior reduction to practice.

With respect to designation of the specific facts, acts and occurrences, Rockwell does not know precisely which testimony it will rely upon at this time since reliance will depend primarily on availability of witnesses at the time of trial.

Rockwell is also continuing to investigate work by others during the 1973-1974 time frame which may provide additional information on which Rockwell may rely as prior inventions under 35 U.S.C. 102(g).

2. Does Rockwell contend that the subject matter of the '232 patent is not patentable under 35 U.S.C. 103 because the differences between the subject matter sought to be patented in the '232 patent and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the invention pertains? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way

relating to the contention that the differences between the subject matter sought to be patented in the '232 patent and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains and identify all persons known to defendant having knowledge thereof;

(ii) Separately identify all persons and documents, including appropriate page and line numbers, upon which defendant relies to establish the skill of a person having ordinary skill in the art to which the invention pertains at the time the invention was made;

(iii) State with specificity the time, i.e., date, including month, day and year, to which defendant refers in the contention that the subject matter as a whole would have been obvious at the time the purported invention was made;

- (iv) State with specificity and clarity the art that defendant contends is "the art to which the invention (of the '232 patent) pertains";
- (v) State with specificity and clarity defendant's contentions as to the level of skill in the pinball machine art in (a) 1974; (b) 1975; (c) 1976; and (d) 1977 with respect to solid-state electronic pinball machines; and
- (vi) State fully the basis for any contention that the subject matter of the '232 patent is not patentable pursuant to 35 U.S.C. 103.

RESPONSE TO 2:

Rockwell does contend that the subject matter of the '232 patent is not patentable under 35 U.S.C. 103 in view of the documents of record in the subject litigation and reissue proceeding. The Patent Examiner in the reissue application of the '232 patent has set forth an obviousness rejection which Rockwell adopts. Rockwell also reconfirms the arguments set forth in the various protests and reply documents filed by Protestors in connection with the reissue of the '232 patent.

Rockwell contends that the invention is obvious in view of the inventors' expansive view of their invention and specifically in connection with moving filmstrip quiz games

such as the Dual IQ Computer, the Puzzler, and the Winner which employ programmable interface cards using matrices. Rockwell is continuing to evaluate testimony and documents connected with such quiz games.

Rockwell intends to present evidence at trial which in accordance with Graham v. John Deere Co., 383 U.S. 1 (1966) will set forth: (a) the scope and content of the prior art; (b) the minimal differences (if any) between the subject matter of the '232 patent and the prior art; and (c) the level of skill in the art. The facts, acts and occurrences upon which Rockwell will rely have not yet been finally determined. However, Bally is informed of the various published art on which the protestors have relied and upon the various work of others outlined in response to Interrogatory 1 above. Rockwell's investigations of Section 103 matters are continuing.

Insofar as the response to Interrogatory 2 purports to require Rockwell to layout in detail the testimony which it will attempt to elicit at trial on the complex issue of obviousness, Rockwell believes the interrogatory to be improper.

3. Does Rockwell contend that the '232 patent is invalid under 35 U.S.C. 112 because (A) the invention is not described in the '232 patent in such full, clear, concise and exact terms as to enable one skilled in the art

to practice the invention or (B) the '232 patent does not set forth the best mode contemplated by the applicants for carrying out the invention? If so:

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the invention is not described in the '232 patent in such full, clear, concise and exact terms as to enable one skilled in the art to practice the invention and identify all persons having knowledge thereof;
- (ii) Separately identify all persons and documents, including appropriate page and line numbers, upon which defendant relies to support the contention that the invention is not described in the '232 patent in such full, clear, concise and exact terms as to enable one skilled in the art to practice the invention and state fully the basis for such contention;
- (iii) Describe all acts, facts, occurrences, and items of information, and identify all

documents, including appropriate page and line numbers, supporting or in any way relating to the contention that the '232 patent does not set forth the best mode contemplated by the applicants for carrying out the invention;

- (iv) Separately identify all persons and documents, including appropriate page and line numbers, upon which Rockwell relies to support the contention that the '232 patent does not set forth the best mode contemplated by the applicants for carrying out the invention and state fully the basis for the above contention, including a specific statement of what mode of the invention was allegedly known to the applicants, at the time the application was filed, to be better than the mode(s) disclosed;
- (v) Does Rockwell contend that the '232 patent is invalid because the '232 patent does not particularly point out or distinctly claim the alleged invention? If so, state fully and completely the basis for this contention

and identify all documents relating thereto;
and

- (vi) State fully the basis for any contention
that the '232 patent is not valid pursuant
to 35 U.S.C. 112.

RESPONSE TO 3:

Rockwell believes that the response to this interrogatory is premature. Bally has indicated in various responses to the Patent Office and in this litigation that various problems have existed in interfacing a microprocessor to a pinball game. Such items as switch noise, switch debouncing, switch timing, and the like, as well as software development, have been represented to the Patent Office and by witnesses as presenting problems the solution to which required inventive skill.

Insofar as Bally intends to rely on the existence of such problems as evidencing invention in the claimed subject matter of the '232 patent, the '232 patent is invalid under 35 U.S.C. § 112. Modes of solution of these problems is not described in the '232 patent, nor are such problems even identified.

Furthermore, software has been admitted by Mr. Fredriksen as not being of his invention and is not disclosed in the patent.

Nonetheless, Rockwell submits that the response to this interrogatory is premature and must await definition of the issues prior to trial.

With respect to a potential defense based upon best mode, Rockwell again submits the interrogatory may be premature. If indeed Bally takes the position that certain problems were solved by the inventors in developing the subject matter of the '232 patent, the best mode for solving these problems is certainly not set forth. Testimony of Bally employees that a new display was developed as well as new solenoid designs and the like indicate that a full disclosure was not made of what was allegedly available as a fully operative pinball machine. Furthermore, there was no complete disclosure of the microprocessor chip and other elements of the chip set allegedly used in the purported reduction to practice of the subject microprocessor controlled pinball game.

4. Does Rockwell contend that Bally is estopped to claim a construction of the '232 patent so that the '232 patent would cover solid-state microprocessor controlled pinball machines containing solid-state pinball machines controllers made or sold by Rockwell (A) for use in D. Gottlieb & Co. System I pinball machines? (B) for use in

D. Gottlieb & Co. System II pinball machines? (C) for use in Brunswick Corporation pinball machines? If so:

- (i) Describe all acts, facts, items of information, and occurrences, and identify all documents, including appropriate page and line numbers, relating to the contention and identify all persons having knowledge thereof; and
- (ii) Specifically state the basis for the above contention, including all information forming the basis for Rockwell's belief and including each and every act, admission, representation, or inducement allegedly made by or on behalf of the applicant for the '232 patent and to which Rockwell refers or relies in its contention.

RESPONSE TO 4:

Rockwell does contend that Bally is estopped to claim a construction of the '232 patent which does not involve the regular scanning of a single matrix for the input and output devices. Rockwell's position is based upon admissions made by the inventors in depositions taken in this case, in documents and in attorney arguments made to the Patent Office.

5. State fully and completely the basis for any contention that any of the solid-state microprocessor controlled pinball machines made and sold by anybody including but not limited to D. Gottlieb & Co. and Brunswick Corporation, and which contain solid-state pinball machine controllers made or sold by Rockwell do not infringe the '232 patent. With respect to all such pinball machines, fully identify each machine, state the manufacture thereof, and specify separately the claim number and claim language upon which any contention of non-infringement is based.

RESPONSE TO 5:

Rockwell submits that Interrogatory 5 is wholly premature at this time. Rockwell is entitled to a construction of the scope of the '232 patent and to an outline of Bally's charge of infringement against Gottlieb and Rockwell. Rockwell is not obligated to go through the 50-odd claims of such patent and speculate as to the scope of these claims. Clearly, Rockwell submits that many claims of the patent will not be charged as infringed. Rockwell will set forth its basis for contention of noninfringement once the charges of infringement are set forth to them in response to outstanding interrogatories.

6. Identify each and every model of solid-state pinball machine controller which defendant has designed, assembled, produced, manufactured, imported, sold, or offered for sale. Identify each model by model number, tradename, and other trade or catalog designation if any.

6(A). Describe each model identified in Interrogatory 6 above including generally the function, operation and major components of each.

RESPONSE TO 6(A):

Rockwell makes or has made such controllers only for Gottlieb and Brunswick. Gottlieb has provided Bally with specimen advertising and manuals describing Gottlieb models. Concerning the function, operation and major components of each, except for game play features, models using the Gottlieb I system are believed to function and operate in basically the same fashion. Games utilizing the Gottlieb II system are believed to function in generally the same fashion to one another. The manuals and advertising should provide complete information.

With respect to Brunswick game controllers, Rockwell has provided controllers only for the games identified to date in depositions. These models have been described in detail in the depositions of Bruce Kinney and Dave Iser.

6(B). State when (1) the manufacture of each model listed in the answer to Interrogatory No. 6 began and ended, and (2) the sales of each such model began and ended.

RESPONSE TO 6(B):

It was Rockwell's understanding in accordance with the prior Rule 12 conference with Bally that information about the length of production runs for each individual game, about how many games of each individual model were produced and about sales including times of sales of each model was to be excluded from discovery. This suit is not an accounting, nor in an accounting stage, and the court has indicated that the damages issue will be severed for separate trial. The information set forth in response to Interrogatory 7(A) should be sufficient.

6(C). For each of the models specified in the answer to Interrogatory No. 6 which has been discontinued, designate completely and in full the reasons therefor.

RESPONSE TO 6(C):

See response to Interrogatory 6(B).

6(D). For each of the models specified in the answer to Interrogatory No. 6, state, by year, the total number of (1) units made, (2) sold, (3) the price charged, and (4) the profit realized.

RESPONSE TO 6(D):

See response to Interrogatory 6(B).

6(E). When, where, and under whose supervision was the first production run made of each of the models specified in the answer to Interrogatory No. 6.

RESPONSE TO 6(E):

See response to Interrogatory 6(B).

6(F). Identify the first and each subsequent advertisement (for all media) of each of defendant's models specified in the answer to Interrogatory No. 6.

RESPONSE TO 6(F):

See response to Interrogatory 6(A).

6(G). Identify the first and all subsequent sales promotional material, e.g., catalogs, bulletins, memoranda, releases or the like, on each of defendant's models specified in the answer to Interrogatory No. 6:

- (1) Distributed to defendant's internal sales or marketing organization;
- (2) Distributed to defendant's external sales or marketing organization, e.g., sales representatives, distributors, retailers, or the like.

RESPONSE TO 6(G):

See response to Interrogatory 6(A).

6(H). Have any of the models, identified in response to Interrogatory No. 6 been manufactured in whole or in part by persons other than Rockwell? If so, identify:

- (1) Each such manufacturer (and/or supplier) and the models identified in response to Interrogatory No. 6 which each such manufacturer (and/or supplier) manufactures or supplies; and
- (2) Specify the portion of each such model manufactured or supplied by each manufacturer or supplier.

RESPONSE TO 6(H):

Parts of Rockwell controllers are or have been manufactured by various suppliers. Rockwell does not feel it is relevant nor appropriate to specify those suppliers beyond the extent already disclosed to date in discovery.

6(I). Identify the first and each subsequent

- (1) Engineering specification and drawing,
- (2) Production specifications and drawing,
and
- (3) Quality control specification,

for each of the models specified in the answer to Interrogatory No. 6.

RESPONSE TO 6(I):

Rockwell objects to this Interrogatory to the extent that it calls for more than the manuals for each game and the voluminous documents already produced.

6(J). With respect to each model listed in the answer to Interrogatory No. 6 made or sold as of June 6, 1978 and thereafter,

- (1) State whether any of the pinball machines manufactured or sold by anybody, including D. Gottlieb & Co., and Brunswick Corporation, and which contain such models are alleged to not be covered by or within the scope of the language of any of the claims of U.S. Patent No. 4,093,232; and,
- (2) Identify completely the particular pinball machine or pinball machines, if any, which are alleged not to be covered or within the scope of any of said claims.

RESPONSE TO 6(J):

All Gottlieb models are outside the scope of the claims. With respect to Brunswick models, Rockwell objects to the interrogatory as irrelevant. Brunswick is not a party to the suit and its games are not properly accused through Rockwell.

6(K). If it is defendant's contention in its answer to Interrogatory No. 6(J) that certain of such pinball machines are not covered by or within the scope of any claim of said Patent No. 4,093,232, with respect to each of those certain pinball machines, state the specific language of each of the claims on which defendant's contention is based, and the reasons for such contention.

RESPONSE TO 6(K):

See Response 5.

6(L). Identify all persons having knowledge of the facts relating to the design and development of each of the models specified in the answer to Interrogatory No. 6.

RESPONSE TO 6(L):

This information is equally available to Bally inasmuch as it appears in the multiple depositions of Gottlieb and Rockwell deponents already taken by Bally. Rockwell knows of no individuals other than those mentioned in such depositions.

6(M). What was the date on which the design and development of each model referred to in Interrogatory No. 6 began?

- (1) Identify the earliest documents which support or evidence this date for each respective model.
- (2) Describe the reason or reasons why the design and development of each of the models referred to in the answer to Interrogatory No. 6 was initiated.
- (3) Identify all documents relating to the conception, reduction to practice and development of each respective model.

RESPONSE TO 6(M):

The Interrogatory is not understood. See response to Interrogatory 6(B).

6(N). In connection with the design and development of each model of Interrogatory No. 6, identify and describe any and all meetings, conferences and discussions between any employee of defendant and any non-employee relating to such design and/or development.

RESPONSE TO 6(N):

This information is available to Bally through the many depositions already taken of both Gottlieb and Rockwell personnel.

6(O). In connection with said design and development of each model of Interrogatory No. 6, identify and describe any and all correspondence and other documents between any employee of defendant and any non-employee relating to such design and/or development.

RESPONSE TO 6(O):

These documents insofar as they are relevant to this litigation have already been produced and identified in connection with the voluminous discovery already undertaken by Bally.

7. Prior to the date on which the persons indicated in Interrogatory No. 6(L) started or became aware of such design and development of each model, did they have any knowledge of:

- (1) Plaintiff, Midway Manufacturing Corporation, Dave Nutting & Associates, Milwaukee Coin Industries (MCI), Mirco, or any employee thereof?
- (2) Solid-state pinball machines sold by plaintiff?
- (3) Solid-state pinball machines sold by Mirco?
- (4) The solid-state pinball machines sold by anyone other than plaintiff and Mirco?
- (5) Patent No. 4,093,232 or the application on which said patent issued?

7(A). If the answer to Interrogatory No. 7(1), (2), (3), (4) or (5) is affirmative, state the date on which such knowledge was acquired, the extent of such knowledge and the circumstances surrounding the acquisition of such knowledge.

RESPONSE TO 7 and 7(A):

Plaintiff has already taken depositions of Gottlieb and Rockwell personnel and ascertained the extent and the knowledge of those individual persons with respect to the

matters outlined in Interrogatory 7. Insofar as Bally desires this information, Rockwell objects to be required to go through depositions taken by the Plaintiff to cull out information which the Plaintiff desires.

8. Does defendant have, or did defendant ever have, in its possession any part of a solid-state microprocessor controlled pinball machine manufactured by or which it has reason to believe was manufactured by Bally Manufacturing Corporation, Midway Manufacturing Corporation, or Mirco?

8(A). If the answer to Interrogatory 8 is affirmative, then state

- (1) The identity of each such machine,
- (2) The manner in which each such machine was acquired,
- (3) The respective date(s) on which they were acquired,
- (4) From whom each such machine was acquired, and
- (5) The purpose for which each such machine was acquired.

RESPONSE TO 8:

See response to Interrogatory 7.

9. Did defendant ever make drawings, sketches, or specifications for complete design or partial design of a solid-state pinball machine controller which was not commercial?

9(A). If the answer to Interrogatory No. 9 is in the affirmative, identify each and every such drawing, sketch, and specification.

RESPONSE TO 9:

Rockwell again objects to being required to supply information already present in depositions taken by Bally of Rockwell personnel in this lawsuit. The depositions of Rockwell personnel, specifically that of Mr. Footh, contains the information sought in this Interrogatory.

10. Did defendant ever test any of the models of its solid-state pinball machines controllers?

10(A). If the answer to Interrogatory No. 10 is affirmative:

- (1) Which model or models were tested?
- (2) What type of test or tests were made?
- (3) Identify who made and who witnessed such tests.
- (4) Where were such tests made?
- (5) When were such tests made?

(6) Were any reports made of such tests?

If so, identify such reports.

RESPONSE TO 10:

Rockwell does not understand this Interrogatory. As Plaintiff is well aware, each of the pinball games manufactured at Gottlieb is tested in some fashion prior to leaving the manufacturing facility of Gottlieb. Since Rockwell supplies the controllers to Gottlieb, Gottlieb's testing of its games necessarily includes testing of Rockwell controllers. Insofar as documents relevant to this litigation relate to the subject matter of this Interrogatory, it is believed that they have already been produced.

11. Identify any and all documents in defendant's possession, custody or control (other than deposition transcripts and pleadings in this case or in the file of the application to reissue the patent in suit):

(1) Mentioning or referring to U.S.

Patent No. 4,093,232;

(2) Relating to said patent, but not identified under (1) of this Interrogatory.

RESPONSE TO 11:

Except for documents generated by counsel and passing between counsel and constituting privileged and work product, which documents have originated since this lawsuit commenced, all documents within the scope of this Interrogatory have been produced to Bally.

12. Has defendant at any time, corresponded with or contacted, met or held discussions with any of its competitors or customers:

- (1) Regarding, in any way, the Patent No. 4,093,232?
- (2) In regard to determining whether a competitor or customer was licensed under said patent?
- (3) In regard to obtaining assistance in any form from a competitor or customer in the possible defense of a suit based on said patent?
- (4) In regard to providing assistance in any form to a competitor or customer in connection with the possible defense of a suit based on said patent?

- (5) In regard to having a competitor make financial contributions to defendant's defense of any such suit?
- (6) In regard to discouraging a competitor or customer from accepting or encouraging a competitor or customer not to take a license under said patent?

12(A). If the answer to any of the Interrogatory Nos. 12(1), (2), (3), (4), (5), or (6) is affirmative:

- (1) Identify all such correspondence and all individuals of both defendant and the competitors or customers involved in such contacts, meetings, or discussions.
- (2) State when and where such contacts, meetings, or discussions were made or held.
- (3) State specifically what transpired at such contacts, meetings, or discussions, and identify all documents relating thereto.
- (4) State specifically the results of and/or action taken during and after

such contacts, meetings, or discussions, and identify all documents relating thereto.

12(B). Were there any meetings, conferences, discussions or conversations concerning, or in any way involving Patent No. 4,093,232, between or among:

- (1) Officers of defendant?
- (2) Officers of defendant and persons who are
 - (a) not employed by defendant?
 - (b) employed by defendant but not an officer?
- (3) Employees other than officers of defendant?

12(C). If so, as to each such meeting, conference, discussion or conversation, identify:

- (i) Its date.
- (ii) The persons involved or in attendance.
- (iii) The place where it occurred.
- (iv) The occasion of its occurrence.
- (v) Any documents relating thereto.

RESPONSE TO 12(A)-(C):

Defendant Rockwell has had multiple contacts with Defendant Gottlieb in preparing the joint defense of this lawsuit, which contacts are privileged and constitute work product and are not discoverable by Plaintiff. Rockwell attorneys also had contact with Motorola attorneys to set-up the Motorola deposition which plaintiff attended and cross-examined. Rockwell believes Motorola to be a competitor which is selling solid state pinball controllers and which stands in the same position as Rockwell with respect to inducement and contributory infringement.

13. With respect to defendant's manufacture and/or sale of each of the models identified in the answer to Interrogatory No. 6, did defendant have authorization, permission, or clearance from an attorney or agent to proceed with such manufacture or sale?

- (1) If so, how many opinions or reports from attorneys or agents has defendant obtained?
- (2) What were the dates of the opinions and reports, and by whom were they written?

13(A). Did defendant at any time obtain an opinion or opinions from an attorney or agent that Patent No. 4,093,232 was invalid?

(1) If so, when? By whom?

(2) If so, was the opinion invalidity based on patents, publications or other activities?

(a) If so, were the patents and/or publications different from those made of record by the Patent Office?

(b) Identify such different patents, publications, or other activities.

13(B). State whether defendant has ever made or ever caused to be made any searches of studies as to the validity of Patent No. 4,093,232.

13(C). If the answer to Interrogatory No. 13(B) is affirmative, identify:

(1) All prior patents, publications, or treatises, as well as possible or alleged instances of prior knowledge or prior public use mentioned in said searches or studies.

(2) Identify the fields of literature searched by specifying the classes and sub-classes of United States and foreign patents searched, by naming the printed publications consulted and their respective dates of publication or date span examined in the case of periodicals, and by identifying the persons interviewed as purported repositories of the lore of the art.

(3) Identify all persons who conducted each segment of defendant's search for prior art.

13(D). To the extent not already given in the answer to previous Interrogatories, identify all opinions or reports on the validity and/or enforceability of Patent No. 4,093,232, including opinions or reports of house counsel and outside counsel.

13(E). Identify any and all opinions or reports to defendant, including but not limited to reports of counsel (for defendant and/or counsel for any other person), relating to the above-captioned lawsuit or any other lawsuit relating to Patent No. 4,093,232.

13(F). To the extent not given in answers to any previous Interrogatories, identify each and every person with whom defendant or its counsel has corresponded on any matter relating in any way to Patent No. 4,093,232 or to the plaintiff.

RESPONSE TO 13(A) - (F):

Rockwell objects to providing information about opinions of counsel as such opinions are privileged, and at this time Rockwell does not waive its privilege.

Insofar as the Interrogatory asks for searches relating to the validity of the '232 patent, the conduct and details with respect to such searches constitute the work product of counsel. Insofar as Rockwell desires to rely on any prior art, it will be identified to Plaintiff in accordance with 35 U.S.C. § 282.

14. Does defendant have any license under any patent that relates to solid-state microprocessor pinball machines or any component part thereof? If so, identify such patent or patents.

RESPONSE TO 14:

Rockwell not only contends it has a license under the '232 patent, but that it has the unqualified right to sell

its computer controllers regardless of the existence of the '232 patent--Rockwell does not sell pinball machines.

15. Identify each person:

(1) Whom Rockwell expects to call as

(a) A fact witness and/or an expert
witness in this civil action
and/or

(2) Who has been retained or employed by
Rockwell (or by its counsel) in antici-
pation of this civil action, in
preparation for trial for this civil
action, and/or in any consulting
capacity in connection with this
civil action.

15(A). As to each expert witness, state the subject on which he is expected to testify.

15(B). As to each expert witness, state the substance of the facts and opinions as to which the expert is expected to testify.

15(C). As to each expert witness, summarize the grounds for each opinion set forth in answer to subparagraph 15(B) hereof.

15(D). Identify each document or physical thing expects to use at trial in this civil action.

15(E). Identify each person whom Rockwell (or its counsel) communicated or corresponded with, or otherwise contacted, as a prospective or potential

(1) Expert witness, or

(2) Consultant, in connection with this civil action, regardless of whether such person was actually retained or employed by Rockwell.

RESPONSE TO 15(A) - (E):

Rockwell has not yet formulated its witness list for trial and has not determined what witnesses, including what expert witnesses will testify nor the subject matter of their testimony. In accordance with an orderly pretrial procedure, Rockwell will provide information with respect to identification of witnesses and expert witnesses.

Rockwell objects to identifying persons it has contacted in connection with identifying an expert until it is determined who indeed Rockwell intends to retain as an expert witness. Then such information will be provided to Plaintiff in accordance with a suitable pretrial procedure.

The contacts made of witnesses of any type by Rockwell's counsel are deemed to be work product of Rockwell.

16. When and under what circumstances did Rockwell become aware that the '232 patent had issued, and when and under what circumstances did Rockwell become aware that this lawsuit had been filed?

16(A). What actions were taken as a result of Rockwell's becoming aware that the '232 patent had issued?

16(B). What actions were taken as a result of Rockwell's becoming aware that this lawsuit had been filed?

16(C). Were any contacts, meetings, or discussions made or held where the issuance of the '232 patent was discussed or where the filing of this lawsuit was discussed?
If the answer is affirmative:

- (1) Identify all individuals involved in such contacts, meetings, or discussions.
- (2) State when and where such contacts, meetings or discussions were made or held.
- (3) State specifically what transpired at such contracts, meetings, or discussions, and identify all documents relating thereto.

- (4) State specifically the results of and/or action taken during and after such contacts, meetings, or discussions, and identify all documents relating thereto.

RESPONSE TO 16(A) - (C):

Rockwell became aware of the '232 patent pursuant to the Chicago litigation against its customer D. Gottlieb & Co. All actions thereafter taken by Rockwell are considered to be work product and not discoverable.

17. With respect to defendant's statements to the United States Patent and Trademark Office in connection with the protests to the reissue application:

In the "Protest by Rockwell International Corporation" on page 17 Rockwell states:

"However, many pinball game manufacturers did begin developing computer pinball in the 1973-1974 time period. Atari, Inc.; Ramtek, Inc.; Nutting, et al.; the Reissue Applicant; Sega; United Games and Brunswick all began computer pinball development programs in earnest prior to 1975."

- (i) Describe all acts, facts, occurrences, and items of information, and identify all documents, including appropriate

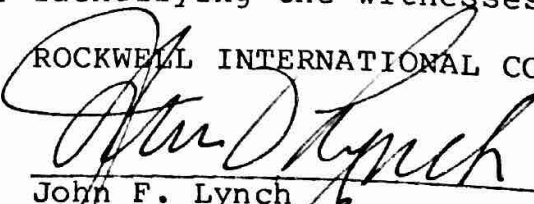
page and line numbers, supporting or in any way related to the above recited contention.

- (ii) State fully and with clarity any basis for the above-recited contention including all information used by Rockwell in forming the above-recited contention.

RESPONSE TO 17:

Rockwell believes that support for its statement in its Protest is clear from the documents of record and testimony to date. How Rockwell became aware of such activities is considered work product of Rockwell and not discoverable. Plaintiff has had ample opportunity to take discovery of these companies. Rockwell has not decided what evidence to use at trial, nor how to present such evidence if it is decided to be used at trial. Rockwell will comply with any reasonable pretrial order identifying the witnesses, etc.

ROCKWELL INTERNATIONAL CORPORATION


John F. Lynch
Wayne M. Harding
ARNOLD, WHITE & DURKEE
7100 Transco Tower
Houston, Texas 77056

ATTORNEYS FOR DEFENDANT

I am the attorney making the objections.


John F. Lynch.

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, JOHN F. LYNCH, being duly sworn, depose and say that I am an attorney representing Rockwell International Corporation and an agent of Rockwell International Corporation for purposes of responding to Plaintiff's First Set of Interrogatories to Defendant Rockwell International Corporation and that the responses are true and correct to the best of my information and belief.


John F. Lynch

SUBSCRIBED AND SWORN to before me on this 21 day of
April, 1980.


Notary Public